

## Portable Audio/Video Recorders

### 410.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (RCW 10.109.010). Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Poulsbo Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 410.2 DEFINITIONS

Definitions related to this policy include:

**Video/Audio Recording Device (VARD)**—any device which records and retains audio and/or video data.

**System Supervisor** – Supervisor(s) designated by the Chief of Police to administer and manage the VARDs, software, and evidence captured by the system.

**System Administrator** – Department Supervisors assigned by the System Supervisor to have some system administrative rights and are tasked with reviewing and sharing evidence with outside agencies.

**Armorer** – Officer(s) assigned by the System Supervisor and tasked with maintaining and uploading all log data for the department's TASER Conducted Electrical Weapons (CEW) and Body Cams, as well as assigning those pieces of equipment and tracking their serial numbers and assignments.

**TASER Body Camera (TBC)** – A VARD designed to be worn by an officer in order to capture, store, and retain until upload, video and audio data.

**Off** – Body Camera is completely off and unable to record.

**Standby (buffering) Mode** – Body camera is continuously recording video into a built in hardware buffer, set at ~30 sec. When camera is switched to active mode, the VARD will “capture” and retain the prior 30 seconds of video only, no audio.

**Active Mode** – Body camera is actively recording both audio and video and storing the information into the internal memory, retaining it there until it can be securely uploaded into evidence.com.

**Evidence Transfer Manager (ETM)** – A docking station which simultaneously charges and uploads the TASER Body Camera data.

**Evidence Sync Software** – TASER software installed on a department computer used to manually upload stored data on a TASER Body Cam or Conducted Electrical Weapon (CEW).

# Poulsbo Police Department

Poulsbo PD Policy Manual

## *Portable Audio/Video Recorders*

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**Evidence Mobile App** – A TASER software application intended to be loaded onto a Smartphone device. The software's purpose is to allow the user to capture evidence as an audio file, digital photo, or video file and then securely upload the files to a secure server for storage.

**Axon Mobile App** – A TASER software application intended to be loaded onto a Smartphone device. The software's purpose is to allow the user to remotely view and tag video data captured on the TASER Body Camera.

**Evidence.com** – an online web based digital media storage facility. The virtual warehouse stores digitally encrypted data such as digital photos, audio files, and video file in a highly secure environment. Department personnel can securely access this virtual warehouse through the Evidence.com website and view, catalogue, manage, download, and share stored data.

### **410.3 POLICY**

The Poulsbo Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### **410.4 MEMBER PRIVACY EXPECTATION**

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of the department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **410.5 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

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- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

#### **410.6 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation (RCW 10.109.010).

#### **410.7 PROHIBITED/CAUTIONARY ACTIVATION OF VARD**

A VARD shall not be activated:

- (a) To surreptitiously record any conversations of any officer of this police department or any other law enforcement agency except with a court order for the purpose of conducting a criminal investigation.
- (b) To record a situation where it is apparent the officer intentionally activated the VARD for no other reason than to ridicule an officer or citizen.
- (c) In any workplace areas where a reasonable expectation of privacy exists, such as locker rooms, restrooms, etc.
- (d) To record a self initiated response to an aid call. Calls for service which specifically go out to Fire and Rescue with no request for law enforcement shall not be recorded.
- (e) Officers shall not use the VARD for personal use and are prohibited from making or retaining personal copies of recordings.
- (f) Officers should take care not to record video of:

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

---

- (a) Law enforcement sensitive data which is visible on computing devices or documents.
- (b) Log in information on any law enforcement or department owned equipment.
- (c) Law enforcement personnel assigned to sensitive positions such as narcotics or under cover positions.
- (d) Confidential informants.

If a recording is intentionally or unintentionally made of any of the above, the officer shall notify a supervisor and flag the video in evidence.com as soon as possible.

#### **410.8 WHEN VARD ACTIVATION IS NOT REQUIRED**

Activation of a VARD is not required when:

- (a) Exchanging information with other officers or during breaks, lunch periods, or when not in service.
- (b) Conducting casual contact with the public where no reason to believe a recording of the event would be in the best interest of the public and/or the City of Poulsbo.

#### **410.9 REQUIRED ACTIVATION OF VARD**

This policy is not intended to describe every possible situation in which the portable recording device may be used, although there are many situations where its use is appropriate. An officer may activate the system any time the officer believes it would be appropriate or valuable to document an incident.

Uniformed officers shall activate the portable recording device system in the following situations:

- (a) Any advisement of Miranda and/or subsequent questioning.
- (b) Non-custodial contacts (Terry Stops) or Field Interviews (consensual contacts).
- (c) Response, arrival, and investigations of in-progress calls for service.
- (d) Any self-initiated enforcement activity such as traffic stops.
- (e) Domestic Violence investigations.
- (f) Execution of search warrants; vehicle searches; searches incident to arrest; and building searches to include Ferrier warnings when applicable.
- (g) Any activity or event which has a high degree of probability to result in civil litigation, such as:
  - (a) Motor Vehicle Accident (MVA) where there is serious injury or death.
  - (b) MVAs, personal injuries, or property damage as a result of any City employee's actions or inaction.
- (h) All transports involving persons of the opposite sex.
- (i) Transports of the same sex whenever:

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

---

1. The subject is believed to be under the influence of alcohol or any drug.
  2. The officer believes there may be any physical or mental issues with the subject.
  3. The subject is acting irrationally, emotional, angry or argumentative.
  4. Prior to transport, the subject attempted to flee, fight, or resist in any way his/her apprehension.
  5. Any use of force was used prior to transport.
- (j) In situations where recording would normally not be required but the subject becomes adversarial after the initial contact.
- (k) Any other circumstance where the officer believes a recording of the event would be appropriate and useful for criminal prosecution and/or risk management.

#### 410.9.1 ACCESS TO EVIDENCE.COM DATA

All recorded media, recorded images, and audio recordings are the property of the Department. Dissemination outside of the agency is strictly prohibited, except to the extent permitted or required by law.

All recorded media, recorded images, and audio data will be uploaded and stored onto the departments Evidence.com server account. Officer's access to this data will be limited by the software as set by the system administrators. These limitations will be approved by the Chief of Police and based on Officer's assignments and need.

No audio or video recording may be made available to the public until final disposition of any criminal or civil litigation which arises from the event or events that were recorded per RCW 9.73.090(1)(c).

Officers can request in writing a video be deleted. This request should be submitted to the officer's immediate supervisor and then forwarded to the Chief of Police. The Chief of Police will make the determination if the video can be deleted.

Recordings may be reviewed in any of the following situations:

- (a) For use when preparing reports or statements.
- (b) By a supervisor investigating a specific act of officer conduct.
- (c) By a supervisor to assess officer performance.
- (d) To assess proper functioning of the portable recording device VARD systems.
- (e) By a department investigator who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation.
- (f) By department personnel who request to review recordings.
- (g) By an officer who is captured on or referenced in the video or audio data and reviews and uses such data for any purpose relating to his/her employment.

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

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- (h) By court personnel through proper process or with permission of the Chief of Police or his designated System Administrator or System Supervisor.
- (i) By the media personnel through proper process.
- (j) To assess possible training value.
- (k) Recordings may be shown for training purposes. If an involved officer objects to showing a recording, his/her objection will be submitted to the Chief of Police to determine if the training value outweighs the officer's objection.

No audio or video recording may be made available to the public until final disposition of any criminal or civil litigation which arises for the event or events that were recorded RCW 9.73.090(1) (c).

#### 410.9.2 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### **410.10 CESSATION OF RECORDING**

Once activated, the VARD should remain on during the primary phase of an event. For the purposes of this section, the primary phase of an event is the portion of an incident which occurs before it is brought under control, stabilized and the initial investigation is complete.

When conducting an investigation that involves a known law enforcement agency employee or a person of influence (such as a city council member, county commissioner, mayor, etc.) officers shall not disable their camera video or audio while consulting with other officers about the investigation. In an effort to remain completely transparent during the investigation the cameras shall remain in operation until conclusion of the officer's investigatory role.

During the secondary phase, the officer may turn the VARD on and off as events occur and as the officer deems appropriate and necessary. The secondary phase is defined for the purposes of this section as the period where any follow-up investigation, medical, or logistical activity occurs after the primary phase has concluded.

Recordings may not be paused during the primary phase when requested by any involved party to the event.

Recordings may pause during the primary phase only if:

- (a)
  1. Two or more officers remove themselves from the immediate presence of any suspects, victims, or witnesses in order to confer with each other for the purpose of safely sharing information and developing a course of action. When officers conduct such a conference, they must record their intentions and recording must restart prior to re-contacting any of the involved persons.
  2. An officer leaves the scene of the event.

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

---

#### **410.11 TAGGING DIGITAL EVIDENCE**

When a media file is stored into Evidence.com's web server using the Evidence Sync or Evidence Mobile software, the officer recording the media is responsible for tagging the media with three user entered tags in accordance with department approved training. These officer entered tags are:

- (a) ID – A case number (whether department or outside agency case number), citation number, infraction number, or a sequence number, in same order of priority. If no identifying number is assigned to the data, the ID should be left blank.
- (b) Title – A short written description of the event.
- (c) Category – Officers must categorize recordings in accordance with manufacturer and department training prior to or immediately after uploading the recording into the system. Categories are determined by the Chief of Police and will be entered into the system by a system administrator.

#### **410.12 UPLOADING DIGITAL MEDIA TO STORAGE FACILITY**

All digital media captured on a VARD or department issued smart phone shall be uploaded and stored into the departments online web storage account in accordance with manufacturers procedures. Officers will adhere to the following requirements:

- (a) Officers should download all digital media evidence captured on a department issued VARD by the end of their working shift, if going on days off, they should advise a shift supervisor their data has not been downloaded.
- (b) Officers shall download any digital media evidence captured on a department issued VARD associated with an in-custody police report, officer use of force events, or any media files the officer should reasonably believe would assist a supervisor in responding to a citizen complaint before the end of their shift.

#### **410.13 SHIFT SUPERVISORS/SYSTEM ADMINISTRATOR/SYSTEM SUPERVISOR RESPONSIBILITIES**

Supervisors shall determine if an officer with a non-functioning VARD should be given a spare if available or put into service without issuing equipment.

System Administrators and System Supervisors should, on a regular basis, ensure:

- (a) Officers' VARD data is being accurately recorded into Evidence.com
- (b) VARD data is appropriately tagged with a category to ensure proper retention.
- (c) Outside entities requesting copies of VARD data are given the data in accordance with department policies and procedures.
- (d) The storage of all digital media on the host website, ensuring data evidence is correctly managed and maintained in accordance with retention rules and policies.
- (e) At times, and with the Chief of Police's approval, evidence located on Evidence.com's servers may be downloaded onto a physical storage media and entered into the

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

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Poulsbo Police Department's physical evidence room. Supervisors must complete a supplemental to the report indicating the transfer and then enter the media with the evidence into the PPD evidence room in accordance with department evidence policies. The evidence may then be deleted from evidence.com servers.

When an incident arises which requires the immediate retrieval of the recorded media (e.g., serious crime scenes, officer-involved shootings, department-involved collisions), a shift supervisor shall respond to the scene and ensure the appropriate crime scene investigator properly retrieves the recorded media. An on scene department supervisor may choose to view the recorded evidence if it is determined immediate viewing would assist in suspect apprehension or assist in proper medical treatment. The recorded data may need to be treated as evidence and should be uploaded into Evidence.com using manufacturer approved procedures.

#### **410.14 RETENTION OF RECORDINGS**

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

#### **410.15 PUBLIC REVIEW OF RECORDINGS**

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be released unless disclosure is required by law or order of the court.

#### **410.16 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Washington law prohibits any individual from surreptitiously recording any conversation, except in a few narrowly construed exceptions. Officers are required to get supervisor approval before attempting to surreptitiously record any conversation to ensure such recording is allowed by law.

# Poulsbo Police Department

## Poulsbo PD Policy Manual

### *Portable Audio/Video Recorders*

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#### **410.17 TRAINING**

The Department should ensure that those members issued a portable recorder receive initial training upon issue and periodic training thereafter (RCW 10.109.010).

#### **410.18 RETENTION OF RECORDINGS**

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days.

##### **410.18.1 RELEASE OF AUDIO/VIDEO RECORDINGS**

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.